Prime Energy Limited Partnership *and* International Union of Operating Engineers, Local 68, AFL–CIO. Case 22–CA–23314

July 20, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

Pursuant to a charge filed on May 3, 1999, the General Counsel of the National Labor Relations Board issued a complaint on May 17, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and to furnish information following the Union's certification in Case 22–RC–11636. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer, with affirmative defenses, admitting in part and denying in part the allegations in the complaint.

On June 14, 1999, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On June 16, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain and to furnish information, but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues warranting a hearing with respect to the Union's request for information. The Respondent admits that by letter dated December 28, 1998, the Union requested that the Respondent furnish it with the following information:

1. A list of current employees including their names, dates of hire, rates of pay, job classification, last known address and phone number.
2. A copy of current personnel policies or procedures.
3. A copy of all company fringe benefit plans including pension, profit sharing, severance, stock incentive, health and welfare, apprenticeship training, legal services, or any other plans which relate to the employees.
4. Copies of all current job descriptions.
5. Copies of any wage or salary plans.
6. Copies of all disciplinary notices, warnings or records of disciplinary personnel actions for the last year.

The Respondent's answer admits that it refused to provide this information, but, by reason of its denial that the Union is the valid exclusive collective-bargaining representative, denies that the information requested is relevant and necessary for the Union's role as the exclusive bargaining representative of the unit employees. It is well established, however, that such information is presumptively relevant and must be furnished on request. See *Trustees of Masonic Hall*, 261 NLRB 436, 437 (1982), and *Verona Dyestuff Division*, 233 NLRB 109, 110 (1977). The Respondent has not attempted to rebut the relevance of the information requested by the Union.

Accordingly, we grant the Motion for Summary Judgment[1] and will order the Respondent to recognize and bargain with the Union and to furnish it the requested information.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Elmwood Park, New Jersey, has been engaged in the operation of a cogeneration plant.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its operations, derived gross revenue in excess of $500,000.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held December 8 and 10, 1998, the Union was certified on December 21, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

[1] The Respondent's request to dismiss the complaint is therefore denied.

> All control board operators/shift supervisors and electrical and mechanical maintenance employees employed by the Employer at its Elmwood Park, New Jersey facility, excluding plant operators, plant managers, assistant plant managers, office clerical employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since about December 21, 1998, the Union has requested the Respondent to bargain and the Respondent has refused. Since about December 28, 1998, the Union has requested that the Respondent furnish information, and since about March 30, 1999, the Respondent has failed and refused to furnish the Union with the information requested. We find that this failure and refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By failing and refusing since about December 21, 1998, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and since about March 30, 1999, to furnish the Union requested necessary and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information it requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Prime Energy Limited Partnership, Elmwood Park, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Union of Operating Engineers, Local 68, AFL–CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All control board operators/shift supervisors and electrical and mechanical maintenance employees employed by the Employer at its Elmwood Park, New Jersey facility, excluding plant operators, plant managers, assistant plant managers, office clerical employees, guards and supervisors as defined in the Act.

(b) Furnish the Union the information that it requested on December 28, 1998.

(c) Within 14 days after service by the Region, post at its facility in Elmwood Park, New Jersey, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 21, 1998.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Dated, Washington, D.C. July 20, 1999

Sarah M. Fox, Member

Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER BRAME, dissenting.

In the underlying representation proceeding, I dissented from my colleagues' denial of the Employer's request for review of the Regional Director's Decision and Direction of Election in which he rejected the Employer's contrary contention and found that the Employer's shift supervisors, senior electrical maintenance supervisor, and senior mechanical maintenance supervisor were employees and not statutory supervisors. Accordingly, I dissent here from my colleagues' finding that the Employer violated Section 8(a)(5) and (1) of the Act in this certification-testing proceeding.

Dated, Washington, D.C. July 16, 1999

J. Robert Brame III, Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Union of Operating Engineers, Local 68, AFL–CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

> All control board operators/shift supervisors and electrical and mechanical maintenance employees employed by us at our Elmwood Park, New Jersey facility, excluding plant operators, plant managers, assistant plant managers, office clerical employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on December 28, 1998.

PRIME ENERGY LIMITED PARTNERSHIP